STATE OF MICHIGAN

COURT OF APPEALS

CORNELL SQUIRES,

Plaintiff-Appellant,

v

CITY OF DETROIT, DETROIT FIRE DEPARTMENT, CALVIN GORDON, DETROIT GENERAL RETIREMENT SYSTEM, NICHOLAS DEGEL, JOSEPH GLANTON and REGINALD O'NEAL,

Defendants-Appellees.

UNPUBLISHED
November 4, 2003

No. 240762
Wayne Circuit Court
LC No. 01-124193-CZ

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the order granting summary disposition in favor of defendants. On appeal, plaintiff asserts that his claims are not barred by res judicata and that the trial court erred in sua sponte granting summary disposition in favor of defendants Detroit General Retirement System, Nicholas Degel, Joseph Glanton and Reginald O'Neal and in awarding attorney fees to the city of Detroit. We affirm.

The applicability of res judicata is a question of law that is reviewed de novo on appeal. *Pierson Sand & Gravel, Inc v Keeler Brass Co,* 460 Mich 372, 379; 596 NW2d 153 (1999). Also, a trial court's grant or denial of summary disposition will be reviewed de novo. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998).

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001); *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997), aff'd 460 Mich 573; 597 NW2d 82 (1999). The doctrine applies to both facts and law. *Jones v State Farm Mutual Automobile Ins*, 202 Mich App 393, 401; 509 NW2d 829 (1993), mod on other grounds *Patterson v Kleinman*, 447 Mich 429, 433 n 3, 434 n 6; 526 NW2d 879 (1994). The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication. *Pierson, supra*, 460 Mich 380. The doctrine also promotes comity between state courts and federal courts. *Dubuc v Green Oak Twp*, 312 F3d 736, 744 (CA 6, 2002).

As a general rule, res judicata serves to bar litigation based on the same events as a previous claim, regardless of whether the subsequent litigation is brought in a federal or state court. *Pierson, supra,* 460 Mich 380. Where a claim has been litigated in federal court, the federal judgment precludes relitigation of the same claim in state court based on issues that were or could have been raised in the federal action, including any theories of liability based on state law. *Id.,* 380-381. If the federal court heard the prior action, then federal law determines whether res judicata applies.[1] *Id.,* 381. The elements of res judicata under federal law are (1) a final decision on the merits in the first action by a court of competent jurisdiction; (2) the second action involves the same parties or their privies as the first; (3) the second action raises an issue actually litigated or which should have been litigated in the first action; and (4) an identity of the causes of action. *Sanders Confectionary Products, Inc v Heller Financial, Inc,* 973 F2d 474, 480 (CA 6, 1992). Identity of causes of action means an identity of the facts producing the right of action and of the evidence necessary to sustain each action. *Id*., 484. Privity means a successor in interest to the party, one who controlled the earlier action, or one whose interests were adequately represented. *Latham v Wells Fargo Bank, NA,* 896 F2d 979, 983 (CA 5, 1990). Because the federal court heard the previous action, federal law applies here.[2]

Here, all of the elements of res judicata are present. First, the federal court's order in the prior action, which granted defendants' motion to dismiss under FR Civ P 12(b)(6), operated as a decision on the merits for res judicata purposes. See *Federated Dep't Stores, Inc v Moitie,* 452 US 394, 399 n 3; 101 S Ct 2424; 69 L Ed 2d 103 (1981); *Randles v Gregart,* 965 F2d 90, 93 (CA 6, 1992). Further, it was a final order in that it resulted in the dismissal of plaintiff's complaint.

Second, in the prior action, plaintiff filed suit against the City of Detroit, the Detroit Fire Department, Charles Wilson, James Bush, Freman Hendrix, Calvin Gordon, Joseph Glanton, Detroit General Retirement System, Phyllis A. James, David Masson, Rodney Allen, Niles Sexton and Reginald O'Neal. The complaint named these people in their capacities as employees of either the City of Detroit or the Detroit General Retirement System and as individuals. In the instant case, plaintiff filed suit against the City of Detroit, the Detroit Fire Department, Calvin Gordon, the Detroit General Retirement System, Nicholas Degel, Joseph Glanton and Reginald O'Neal. Nicholas Degel is the only person who is a party here who was not a party to the prior action. But the judgment in the prior action for the Detroit General Retirement System bars all claims alleged against Degel in his official capacity because a suit against a public employee is a suit against the agency itself. *Kentucky v Graham,* 473 US 159, 165-166; 105 S Ct 3099; 87 L Ed 2d 114 (1985); *Mitchell v Chapman,* 343 F3d 811; 2003 FED App 0325P, 18 (CA 6, September 11, 2003).

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[1] Likewise, if the first action is in a state court and the second action is in federal court, then the federal court must apply the state's law regarding res judicata. *Dubuc, supra,* 312 F3d 744.

[2] We note that the elements of res judicata under Michigan law are the same as under federal law. See *Sewell, supra,* 463 Mich 575, and *Huggett v Dep't of Natural Resources,* 232 Mich App 188, 197-198; 590 NW2d 747 (1998), aff'd 464 Mich 711; 629 NW2d 915 (2001).

Although officials may be held liable in their personal capacity for actions they take in their official capacity, *Hafer v Melo,* 502 US 21, 27; 112 S Ct 158; 116 L Ed 2d 301 (1991), in this case, plaintiff has only alleged actions by Degel as a representative of the Detroit General Retirement System seeking payment of unapproved disability benefits. Plaintiff's action against Degel is therefore one against him in his official capacity because he is sued as an individual but the remedy sought is that of compelling action over which Degel has control by virtue of his official authority. Restatement Judgments, 2d, § 36, comment e. "If the remedy sought is damages and the public body of which he is an official is solely responsible for paying them, the public official likewise appears in his official capacity and is in effect merely a formal party." *Id.* Because there are no allegations against Degel for damages that could not also be recovered against his principal, the Detroit General Retirement System, Degel's interests were adequately represented in the prior actions. Consequently, Degel was in privity with the Detroit General Retirement System. *Sanders, supra,* 973 F2d 481.

The third question to consider is whether the instant action raises issues actually litigated or which should have been litigated in the prior action. In the prior action, all of plaintiff's claims arose out of his suspension without pay in October 1993, and the denial of a duty disability pension and the denial of long-term disability benefits beyond those plaintiff received for the years 1997 through 1999. In the current action, all but two of the claims arise from the same suspension and the same denial of a duty disability pension and long-term disability benefits. These claims are clearly barred, having been litigated previously. They include the claims asserted under the Municipal Employees Retirement Act, MCL 38.1051, Fire Fighters and Police Officers Retirement Act, MCL 38.1009, the Michigan Constitution, the Detroit City Code, and impairment of contractual obligations. Plaintiff advanced separate theories in separate suits before two different courts for one common set of facts. This is the precise situation that the doctrine of res judicata seeks to avoid. *Wilkins v Jakeway*, 183 F3d 528, 532 (CA 6, 1999).

The two remaining claims, which were not raised, should have been raised in the prior action. Plaintiff asserted claims under the Michigan Employment Relations Act, MCL 423.231 *et seq*., and MCL 408.1065, arising out of plaintiff's alleged constructive discharge that occurred when he requested a return to light duty work in 1998. Plaintiff did not assert these claims in the prior action, but he should have. The complaint in the prior action was not filed until September 2000, two years after the constructive discharge. There is no doubt that plaintiff was aware of his alleged constructive discharge when he filed the prior action, but he provides no explanation as to why he failed to include this claim against the City of Detroit at the time he filed the prior action. Also, plaintiff alleged in his complaint in this action that the constructive discharge in 1998 was retaliation for discrimination charges plaintiff filed against the City of Detroit and the Detroit Fire Department, which plaintiff asserted were the cause of his alleged constructive discharge, his suspension, and the denial of disability benefits, all of which were the subject of plaintiff's three prior suits against the City of Detroit. Because the allegations surrounding plaintiff's constructive discharge are completely intertwined with the facts underlying plaintiff's claims in the prior action, plaintiff should have raised the issue of his constructive discharge in the prior action. Any claims that could have been raised in a prior action are barred. *Federated Dep't Stores, supra,* 452 US 398.

Fourth, there is identity of action between the prior action and the instant case. The facts giving rise to the complaint in the prior action and the complaint in this action are the same. They involve plaintiff's suspension in 1993 and the denial of duty disability benefits and long-term disability benefits. As plaintiff would be required to present the same witnesses and evidence in both cases to prove each claim, there is identity of action. *Sanders, supra*, 973 F2d 484.

A comparison of the complaint in this and the prior action demonstrates that all of the elements of res judicata have been satisfied. The trial court did not err in granting dismissal to the City of Detroit defendants and to the Detroit General Retirement System, Glanton, O'Neal, and Degel.

Plaintiff next argues that the trial court erred in awarding attorney fees in favor of the city of Detroit. We disagree.

We review a trial court's finding that a claim or defense was or was not frivolous for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A finding is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made. *Kitchen, supra*, 465 Mich 661-662. We review the trial court's determination of the amount of the sanctions imposed for an abuse of discretion. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002). MCR 2.114(D) sets forth the effect of a signature on documents filed with the court:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> (1) he or she has read the document;
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> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
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> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Sanctions for violation of the above section are provided for in MCR 2.114(E):

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses, incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

The imposition of sanctions under MCR 2.114 is mandatory upon a finding that a pleading was signed in violation of the court rule. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

Here, as the trial court indicated in its findings, plaintiff sued the City of Detroit over his suspension without pay in October of 1993 in three prior actions and for the denial of benefits in one prior action. The claims in all suits were dismissed with prejudice. Plaintiff, by continuing to file suits based on the same transaction and occurrence against the City of Detroit, when each claim had been previously disposed of on the merits, violated the requirement of MCR 2.114(D) that the complaint be well grounded in fact and warranted by existing law. Therefore, the trial court's determination that plaintiff's suit was not warranted by existing law was not clearly erroneous, and the award of $250 in attorney fees was not an abuse of discretion.

We also disagree with plaintiff's next claim of error: that the trial court erred in sua sponte granting summary disposition in favor of defendants Detroit General Retirement System, O'Neal, Glanton and Degel.

We review a trial court's grant or denial of summary disposition de novo. *Spiek, supra*, 456 Mich 337. MCR 2.116 (I)(1) provides:

> If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.

Plaintiff had notice that the defendants were claiming res judicata when the City of Detroit defendants filed their motion for summary disposition on that basis. Plaintiff was afforded notice of this motion for summary disposition, the opportunity to file a brief, and an opportunity to be heard on the issue at the motion hearing. While the Detroit General Retirement System, O'Neal, Glanton, and Degel defendants did not file a motion for summary disposition alleging res judicata, the factual and legal issues the City of Detroit, the Detroit Fire Department and Gordon set forth in their motion are almost identical to the issue involving the remaining defendants. While plaintiff did not have "unequivocal notice of the court's intention" as Judge Corrigan in her concurring opinion in *Haji v Prevention Ins Agency*, 196 Mich App 84, 90; 492 NW2d 460 (1992), concluded should be the case whenever a trial court contemplates sua sponte summary disposition, the notice was sufficient in this case. So, because plaintiff had notice and an opportunity to respond to the issue of res judicata, the trial court did not err in sua sponte granting summary disposition to the Detroit General Retirement System, O'Neal, Glanton, and Degel. *Hover v Chrysler Corp*, 209 Mich App 314, 317; 530 NW2d 96 (1995).

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Jane E. Markey